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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/908,852	08/08/97	ROE	D 5494CR

027741
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PATENT DIVISION
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QM31/0619

EXAMINER	
RUHL, D	
ART UNIT	**PAPER NUMBER**
3761	28

DATE MAILED: 06/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/908,852	Applicant(s) ROE ET AL.	
	Examiner Dennis Ruhl	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 April 2001* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-7,9-13 and 16-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-7,9-13,16-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15)☐ Notice of References Cited (PTO-892)
16)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
18)☐ Interview Summary (PTO-413) Paper No(s). _____ .
19)☐ Notice of Informal Patent Application (PTO-152)
20)☐ Other: .

Applicant's response of 4-2-01 has been entered. The formal drawings of 4-23-01 have been received and entered. Currently claims 1,4-7,9-13,16-26 are pending.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1,4-7,9-13,16-22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Duncan et al. (3489148).

With respect to claims 1,4-7,9-11,13,16-20, Duncan discloses a topsheet 12, absorbent 11, and backsheet 11a. Duncan discloses that the topsheet has multiple discrete droplets of a lotion composition 14a. The discrete droplets of lotion have macroscopic areas between them that have no lotion. The disclosure found in column 2, lines 7-9 indicates that the use of a hydrophilic topsheet was known in the public domain as of 1-13-1970. Even though

Duncan is mainly concerned with a hydrophobic topsheet this portion of the disclosure teaches that it is known to use lotion on a hydrophilic topsheet. The lotion of Duncan is fully capable of preventing the adherence of bowel movements to the skin of the wearer. Duncan does not disclose what the open percent area of the topsheet is. It is evident that Duncan does have some value for the percent open area, Duncan is just silent as to what this value is. In column 3 Duncan discusses and recognizes that the amount of lotion applied to the topsheet can be varied and that this will affect how much lotion is transferred to the wearer. Duncan also recognizes that the diameter of the discrete droplets of lotion can be varied. Duncan therefore recognizes that the percent open area can be varied (although Duncan does not specifically call is percent open area). Duncan recognizes that the amount (% open area) of lotion is a result effective variable (i.e. a variable which achieves a recognized result). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Duncan with the claimed percent open area. "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation" *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

With respect to claims 12,13, the immobilizing agent is considered to be the viscosity additive disclosed in column 2, lines 20-44.

With respect to claim 21, see column 3, lines 40-44.

With respect to claim 22, stearic acid is a C(14)-C(22) fatty acid; therefore, Duncan anticipates this claim.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1,4-7,9-13,16-26, are rejected under 35 U.S.C. 103(a) as being unpatentable over Duncan et al. (3489148) in view of Buchalter (3896807).

Duncan discloses a topsheet 12, absorbent 11, and backsheet 11a. Duncan discloses that the topsheet has multiple discrete droplets of a lotion composition 14a. The discrete droplets of lotion have macroscopic areas between them that have no lotion. The disclosure found in column 2, lines 7-9 indicates that the use of a hydrophilic topsheet was known in the public domain as of 1-13-1970. Even though Duncan is mainly concerned with a hydrophobic topsheet this portion of the disclosure teaches that it is known to use lotion on a hydrophilic topsheet. Duncan does not disclose the use of the specific lotions claimed or what the open area of the topsheet is. It is

evident that Duncan does have some value for the percent open area, Duncan is just silent as to what this value is. In column 3 Duncan discusses and recognizes that the amount of lotion applied to the topsheet can be varied and that this will affect how much lotion is transferred to the wearer. Duncan also recognizes that the diameter of the discrete droplets of lotion can be varied. Duncan therefore recognizes that the percent open area can be varied (although Duncan does not specifically call is percent open area). Duncan recognizes that the amount (% open area) of lotion is a result effective variable (i.e. a variable which achieves a recognized result). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Duncan with the claimed percent open area. "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation" *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Buchalter discloses an oil phase impregnant in the form of a non-oily solid that forms a cream upon the application of perspiration and heat that is used on articles such as facial masks. sanitary napkins, diapers, etc., where the cream is applied to the skin of a person. The wearer's skin will produce sufficient moisture and heat to cause emulsification of a portion of the oil phase. The substance is a dry non-oil, non-greasy, solid at room temperature and it is essentially free from water. The formulation is made from about 1% to about 99% and preferably from about 30% to about 70% of an oily material which includes mineral oil and petrolatum, and from about 99% to about 1% and preferably from about 30% to about 70% of an immobilizing agent. The resulting preparation can be applied to the article in a liquid phase and cooled to form a solid

oil phase. The oil phase may additionally include, but are not limited to paraffin, vegetable oils, animal oils, and isopropyl palmitate. The oil phase is in the form of a dry, non-oily, non-sticky solid at room temperature, and comprises an oily material and one or more emulsifying agents and may include in addition, one or more emollients. The immobilizing agent or emulsifying agent includes cetyl alcohol, long chain fatty acid partial esters of a hexitol anhydride wherein the fatty acid has at least 6, preferably from 12 to 18 carbon atoms including the long chain fatty acid partial esters of sorbitan, sorbide, mannitan, and mannide and mixtures thereof. The emulsifying agent is considered to be the same as applicant's immobilizing agent. The lotion of Buchalter is fully capable of preventing the adherence of bowel movements to the skin of the wearer.

It would have been obvious to one of ordinary skill in the art at the time the invention was to use the skin care composition of Buchalter on the diaper of Duncan (as disclosed by Duncan) so that the benefits of the skin care composition of Buchalter can be obtained on the article of Duncan.

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The above rejections address the presently pending claims and no further comments from the examiner are warranted. Applicant has based the patentability on the amended claim language because no other traversal of the prior art has been presented.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is (703) 308-2262.

DENNIS RUHL
PRIMARY EXAMINER

June 14, 2001